

REMARKS

Rejections Based Upon 35 U.S.C. §103(a)

In this Office Action, Claims 20-22, 26-28, 34, 39-44, and 51-53 were rejected under 35 U.S.C. §103(a) as being unpatentable due to obviousness over United States Patent No. 6,270,875 issued to Nissing. Claims 29 and 37 were not rejected based on the prior art, and are supported by Claims 20 and 34. Applicants respectfully submit that the claims are not obvious for the following reasons: there is no teaching or suggestion to modify the prior art, the film layer in the prior art is not inherently elastic, the proposed modification renders the prior art unsatisfactory for its intended purpose, the proposed modification changes the principle of operation of the prior art, and teaches away from the claimed article.

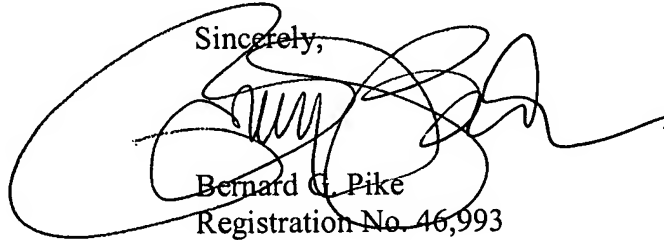
Under *KSR* and subsequent examination guidelines issued by the USPTO, a rejection on grounds of obviousness requires an Office Action to have “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *See* 72 Fed. Reg. 57,526 (2007). In *In re Fulton*, the court emphasized that the proper inquiry is “whether there is something in the prior art as a whole to suggest the *desirability*, and thus the obviousness, of making the combination.” 391 F.3d 1195, 1200-1201 (Fed. Cir. 2004); MPEP § 2143.01. This was underscored by the USPTO guidelines and *KSR*, which noted that it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” *See* 72 Fed. Reg. 57,526 (2007). Applicants teach an elastic film layer to provide a comfortable fit for its absorbent articles. *See* paragraphs [0002]-[0003] of the specification as originally filed. There is nothing in the cited prior art to suggest the desirability of Applicants’ *elastic* film layer. On the contrary, the Nissing teaches a film layer that “inhibits wet extension of both the first and third layer.” *See* Nissing,

CONCLUSION

Applicants believe that they have fully addressed each basis for the rejection in the Office Action. Reconsideration of the claims of the subject application and issuance of a Notice of Allowability is respectfully requested. Should the Examiner have any remaining concerns, he is requested to contact the undersigned at the telephone number given below so that the concerns may be resolved with issuance of an additional Office Action.

No fees beyond the concurrently paid filing fees for this application are believed due for this *Response to Office Action*. Nonetheless, authorization to charge deposit account No. 20-1507 is given herein should fees be due.

Sincerely,

A handwritten signature in black ink, appearing to read "Bernard G. Pike", is written over the typed name and registration number.

Bernard G. Pike
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